

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Davis Analyst: Jeff Garnier Bill Number: AB 2096

Related Bills: See Prior Analysis Telephone: 845-5322 Amended Date: May 22, 2000

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Long-Term Care for Seniors Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED 2/22/00 STILL APPLIES.

X OTHER - See comments below.

### SUMMARY OF BILL

**This bill** would provide for a \$500 non-refundable credit to taxpayers who are eligible caregivers for each applicable individual 65 years of age or older in need of long-term care. An applicable individual may be the taxpayer, spouse of the taxpayer or a qualifying dependent (as defined under this bill) who has been certified to have long-term care needs.

### SUMMARY OF AMENDMENT

The May 22, 2000, amendments removed the prior credit language that would have allowed a \$500 credit for family and non-family members but excluded the taxpayer or the taxpayer's spouse. The amendments added language to allow a \$500 credit for the taxpayer, the taxpayer's spouse and a dependent (as modified) of the taxpayer.

The discussion of the current treatment of long-term care and the revenue discussion contained in the February 22, 2000, analysis still apply. The remainder of the February 22, 2000, analysis no longer applies and is replaced with the discussion in this analysis.

### EFFECTIVE DATE

This bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2000.

### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> <u>X</u> PENDING

Legislative Director

Date

Johnnie Lou Rosas

6/14/00

SPECIFIC FINDINGS

**This bill** would provide a \$500 non-refundable credit to a taxpayer for each applicable individual 65 years of age or older with long term care needs for whom the taxpayer is an eligible caregiver. A taxpayer is treated as an eligible caregiver for the taxpayer, the spouse of the taxpayer, or a qualifying dependent (under this bill) who has been certified by a physician to have long-term care needs.

For purposes of this credit, **this bill** would broaden the definition of a dependent in two ways. First, the gross income threshold test would increase to the sum of the federal personal exemption amount, the federal standard deduction, and the additional federal deduction for the elderly and blind. In 1999, the gross income threshold would generally be \$8,100 for an elderly or blind dependent. The threshold amounts are calculated using the federal amounts. Second, the support test would be deemed to be met if the taxpayer and an individual with long-term care needs reside together for a specified period. The length of the specified period would depend on the relationship between the taxpayer and the individual with long-term care needs. The specified period would be over half the year if the individual is the parent (including stepparents and in-laws), ancestor of the parent, or child of the taxpayer. Otherwise, the specified period would be the full year. If more than one taxpayer resides with the person with long-term care needs and would be eligible to claim the credit for that person, then those taxpayers generally must designate the taxpayer who would claim the credit. If the taxpayers fail to do so or if they are married to each other and filing separate returns, then only the taxpayer with the higher modified federal AGI would be eligible to claim the credit.

Under **this bill**, an individual age 65 or older would be considered to have long-term care needs if he or she were certified by a licensed physician (prior to the filing of a return claiming the credit) as unable for at least six months to perform at least three activities of daily living (ADL) without substantial assistance from another individual. The inability to perform three ADLs must be due to a loss of functional capacity (including individuals born with a condition that is comparable to a loss of functional capacity).

As under the present-law rules relating to long-term care, ADL would be eating, toileting, transferring, bathing, dressing, and continence. Substantial assistance would include both hands-on assistance (the physical assistance of another person without which the individual would be unable to perform the ADL) and stand-by assistance (the presence of another person within arm's reach of the individual that is necessary to prevent, by physical intervention, injury to the individual when performing the ADL).

As an alternative to the 3-ADL test described above, an individual would be considered to have long-term care needs if he or she were certified by a licensed physician as (a) requiring substantial supervision for at least six months to be protected from threats to health and safety due to severe cognitive impairment and (b) being unable for at least six months to perform at least one or more ADLs. An individual would also be considered to have long term care needs if, to the extent provided by FTB (in consultation with the Secretary of Health and Welfare Agency), the individual is unable to engage in age-appropriate activities.

**This bill** would provide that a portion of the period certified by the physician would have to occur within the taxable year for which the credit is claimed. After the initial certification, individuals would have to be recertified by their physician within three years or such other period as the Franchise Tax Board (FTB) prescribes.

**This bill** would require the taxpayer to provide a correct taxpayer identification number for the individual with long-term care needs for whom the credit is claimed, as well as a correct physician identification number for the certifying physician on the tax return. Failure to provide correct taxpayer and physician identification numbers would be subject to the mathematical error rule. Under that rule, the FTB may summarily assess additional tax without sending the individual a notice of proposed assessment. Further, the taxpayer could be required to provide the required physician certification upon the FTB's request.

**This bill** would provide for any excess credit to be carried over until exhausted.

#### Policy Considerations

This credit would not be limited to taxpayers or applicable individuals who reside in California. However, limiting the credit to residents of California may render the bill unconstitutional.

This bill would not actually require the taxpayer to provide long-term care to an applicable individual. This bill would only require the applicable individual to be certified as needing long-term care and that the applicable individual be the taxpayer, taxpayer's spouse or a qualifying dependent of the taxpayer.

The tax credit provision does not contain a sunset date. Sunset dates generally are provided to allow periodic review by the Legislature.

This bill would allow an unlimited carryover period for the credit. Recently enacted credits have contained a limited carryover period since credits typically are exhausted within eight years.

#### FISCAL IMPACT

##### Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

Revenue losses under the Personal Income Tax Law are estimated as follows:

Revenue Impact of AB 2096 as Amended 5/22/2000		
For Taxable Years Beginning 1/1/2000		
Assumed Enactment After 6/30/00		
(In Millions)		
2000-01	2001-02	2002-03
-\$25	-\$24	-\$26

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Tax Revenue Discussion

Revised revenue losses above reflect an increase of \$5 million for fiscal year 2000-01, \$6 million for 2001-02 and 2002-3 from the previous version of this bill. The increase in losses is primarily attributable to changing the definition of a qualifying individual to include the taxpayer or the taxpayer's spouse.

With the above exception, our previous analysis and assumptions for this bill still apply.

BOARD POSITION

Pending.